



FACSIMILE

1250 Connecticut Avenue NW – Suite 700
Washington, DC 20036

Tel: (202) 822-1100
Fax: (202) 822-1111

Date:	April 20, 2010
To:	Examiner Lea, Christopher Raymond U.S. Patent and Trademark Office
Re:	Interview U.S. Patent Application No. 10/532,077 By: Shigeo II et al. <u>Our Reference: 052485</u>
Fax Number:	571-270-6870
Number of Pages:	3 (including cover sheet)
From:	Andrew G. Melick/adp (5055.0005)

Please see attached list of issues to discuss in the telephone interview scheduled for April 21, 2010 at 2 p.m.

THE INFORMATION CONTAINED IN THIS MESSAGE IS CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED. This message may also be an attorney/client communication that is privileged and confidential. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by calling us collect and return the original message to us at the above address by mail. Thank you.

Interview

Application No. 10/532,077

Docket No.: 052485

- I. It would not have been obvious to combine Xiang and Okada.
- A. Xiang and Okada teach opposite mechanisms:
1. Xiang discloses reducing volatile loss of spice flavoring oil food product for flavor preservation and the use of microencapsulation to achieve the reduction in volatile loss, *i.e.*, **Xiang teaches preventing the release of spice flavoring.**
 2. Okada discloses a food packing material including isothiocyanate ester which must be released to preserve freshness of food, *i.e.*, **Okada teaches purposely releasing isothioscyante ester.**
- B. The purpose of the microencapsulation in Xiang is to prevent volatile loss of spice flavoring oil food product for flavor preservation.
1. Even though ultimately some volatile loss occurs in Xiang, the goal of Xiang is to prevent this loss. This is demonstrated in the Examples in Xiang where retention rates of as high as 97% were achieved. (Xiang, pages 8-12.)
 2. One of ordinary skill in the art would understand that this “high storage tolerance” taught in Xiang is not the same mechanism as in Okada which requires a constant rate of emanation and *an effective concentration* for maintaining freshness of food.
- C. When viewing the references as a whole, one of ordinary skill in the art would not combine the teachings of a “high storage tolerance” and high retention rates as taught in Xiang with a food packaging material including isothiocyanate ester which must be released to preserve freshness of food.

- II. Even if Xiang and Okada can be combined as alleged, the combination would not teach “A humidity-dependent antibacterial food storing article” and “the behavior of release of the antibacterial substance changes depending on humidity ... said volatile oily antibacterial substance is an isothiocyanate ester” as recited in claim 7.
- A. The alleged modified product of Xiang and Okada would require the packaging material of Okada.
1. Based on the teachings of Xiang and Okada as a whole, to form an item capable of functioning as a food storing article, one of ordinary skill in the art would have to use the teachings of the packaging in Okada.
 2. The packaging material in Okada is formed by using the matrix to entrap the isothiocyanate acid compound by adsorption, and then packaging the matrix and isothiocyanate acid compound in a synthetic resin or a nonwoven packaging material. (Col. 3, line 64 to col. 4, line 9.)
- B. This alleged modified product of Xiang and Okada having the packaging material of Okada would allow the release of isothiocyanate irrespective of humidity as demonstrated in the Declaration submitted November 12, 2008.
1. When the isothiocyanate is adsorbed with a matrix (xanthane gum) as in Okada, the isothiocyanate is released irrespective of humidity.
- III. Claim 9 - The food storing article is not merely an intended use.
- A. Claim 9 recites structure for the food storing article, *i.e.*, the article is selected from the group consisting of synthetic resin film, nonwoven fabric, paper, tray, sheet, bags, containers and tape.
- B. If Okada is cited for teaching a packaging (since Xiang does not teach such a packaging), it is again noted that the declaration submitted November 12, 2008 demonstrates that the packaging material of Okada allows the release of isothiocyanate irrespective of humidity.